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COLUMBIA JOURNALISM REVIEW
January-February 1985

Trashing the FOIA

How bureaucrats have been licensed to thwart the intent of Congress — and drive reporters up the wall

by STEVE WEINBERG

When Carl Stern of NBC News wrote the U.S. Justice Department on November 3, 1982, asking for documents under the Freedom of Information Act, he thought his request was a simple one. His letter was addressed to Guy Zimmerman, director of the audit staff for the Justice Management Division, and it identified documents in detail — for example, “the audit, dated June 29, 1982, of the New England State Police Administrators Conference.”

As a frequent user of the Freedom of Information Act, Stern knew that the chances of getting the government to comply with a request improve when the query is sent to a specific person within the vast bureaucracy, and when that person is provided with details that will help him or her locate the documents among the millions of pieces of paper on file.

Realizing that the agency's FOIA reviewers might be facing a backlog, Stern suggested that “if it would expedite handling our request, we would be happy to review the photocopies at your office and indicate the relatively small number of which we would like to have a copy furnished to us.”

Much to Stern's consternation, Zimmerman replied on November 30, 1982, that it would cost Stern \$196 to view 1,340 pages, adding: “We will not consider your request received until you have agreed to bear the cost.”

That angered Stern. On December 2, he wrote Zimmerman that NBC News had little interest in most of the material: “We seek only a small number of pages. I doubt if it would exceed eight or ten. That is why we offered to come to your office to determine what we needed. No agency I know of prohibits news people from access to material until they agree to buy copies of all of it.”

Stern wondered why any fee was being levied, unless the motive was delay. Citing the FOIA itself and internal Justice

Department guidance, Stern noted that “it is almost universal practice for the Justice Department to waive fees for a news agency like ours.”

When Zimmerman refused to bend, Stern appealed to Jonathan Rose, an assistant attorney general, on January 3, 1983. “If Mr. Zimmerman is correctly following new Justice Department procedures,” Stern wrote, “bona fide reporters working for established news agencies would have to pay at the door to see government records.”

On February 1, Rose rejected Stern's pleas. He asked Stern to “state some basis beyond your personal identity as a news reporter why the taxpayers should subsidize the search and copying costs involved in the release of numerous arcane audit slips of no apparent public interest. Until such an interest to the public is identified, we believe that legally the processing costs belong to the substantial news organization for whom you work, or to you personally.”

Stern replied on February 4, expressing incredulity at Rose's failure to see the public interest inherent in the documents. “You do know,” he wrote, “that the expense vouchers and receipts I wish to see form the core of the audit reports . . . which led to sharply worded correspondence between the deputy attorney general and members of Congress, and to a meeting between myself and the assistant attorney general in charge of the Criminal Division and the director of the Office of Justice Assistance, Research and Statistics. At issue is the integrity and efficiency of these government-funded programs. I mention this not because I believe such a showing is necessary, but merely to underscore the disingenuousness of your characterizing the material as ‘arcane audit slips of no apparent public interest.’ ”

Stern's persistence paid off. On March 1, 1983, Rose agreed to Stern's demand for a fee waiver, promising that the Justice Department's audit staff would “soon commence searching and processing the records.”

So, four months after Stern asked for clearly identified documents, the Justice Department agreed that the request would benefit the public. Only then did the government begin to decide which documents Stern could see and which

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